

## **Roger Brooke Taney to Andrew Jackson, April 29, 1833, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.**

### **ATTORNEY GENERAL TANEY TO JACKSON.**

Attorney General's Office, April 29, 1833.

*Sir*, I have already had the honor of stating to you in writing my opinion that the conduct of the Bank of the United States appears to have been such that the Executive Branch of the Government may lawfully withdraw from it the deposits of the public money, and that the public interest requires it to be done. And also that the fiscal operations of the Government may be safely and conveniently carried on through the State Banks.

The most formidable objection to this measure arises from an apprehension of the difficulties which the Bank of the United States may throw in the way of its execution. It is supposed that the Bank of the U. States, by means of its immense capital and numerous Branches would be able to cripple the operations of the State Banks and perhaps to break them, and thereby derange the currency, embarrass the Government and produce great individual inconvenience and distress. And it seems to be believed that the Bank of the U. States would be disposed to use this power if the public deposits should be withdrawn from it.

If the Bank possesses this alarming power to do evil, the Government have a right to expect that the President and Directors of that institution would be incapable of using it for such an unworthy purpose. It is difficult to imagine that a corporation which owes its existence to the Government and has received so many favours from it and so much indulgence, could under any circumstances be so forgetful of its moral as well as of its

## Library of Congress

legal and political duties, as to use its powers for the purpose of inflicting injury on the community which it was created to serve. One can hardly bring himself to believe that the powers and privileges given to a corporation in order to enable it to confer benefits on the people of the U. States could in the spirit of revenge or of selfishness be wilfully abused for the purpose of producing public distress. It must however be admitted to be the general sentiment that the Bank is prepared to act on such reprehensible motives. And this prevailing impression is of itself abundant proof that the corporation has by its conduct forfeited the confidence and esteem of the public, and that it is now believed to be capable of violating its duties moral and political in order to advance its interests or promote the ambitious views of those who wield its power.

It would not therefore be prudent in the Government to count on the forbearance of the Bank or on its sense of duty to the public. And if it can be shewn that the Bank possesses the power to break or to embarrass the State Banks selected by the government, and thus destroy the healthy state of the currency, it may well be doubted whether the measure ought to be adopted. But the evidence or the argument which proves that the Bank possesses this power will at the same time shew that the corporation is dangerous to the liberties of country and ought not to be longer tolerated. For if the measures of the Government are to be influenced by the fear of its resentment or opposition, the time will soon come when its power must be encountered in some form or other, or the government be in effect surrendered into the hands of the Bank.

But does the Bank possess this power? Is there any reason to fear its hostility?

As I understand the argument on this point it is shortly this. The Bank of the U. States will refuse to receive from the selected State Banks, their own notes payable at their branches. The greater part of their notes in circulation are of this description, and they are payable for the most part at remote Branches. These notes will be paid into the state Banks in the commercial cities for duties and debts to the Government. The state Banks will not be able to convert them into specie, and they will remain an useless incumbrance in their vaults,

## Library of Congress

unless they incur the ruinous expense of sending agents to collect them at the various and distant places where they are made payable. And the notes of the State Banks being collected at the different Branches of the Bank of the U. States and transmitted to the mother Bank that Bank will press for specie on the State Banks, and these Banks having an over proportion of their funds in these unavailable Branch notes, they would not be able to meet the calls upon them, and still less to transmit the revenue to the points where the exigencies of the Government require it to be placed. This I believe is the outline of the argument founded on apprehensions of the power of the Bank of the U. States.

This whole argument rests on the assumption that if the deposits are withdrawn the Bank of the U. States will be absolved from the obligation to give the necessary facilities for transferring the funds of the U. States from place to place, as is provided for in the fifteenth Section of the charter. It is very clear that if this obligation on the Bank continues in force after the deposits have been withdrawn there can be no just ground to fear its power. Because as soon as the notes payable at the Branches come into the possession of the State Banks as a special deposit for the public, the Government would have the right to place them in the Bank of the U. States and to require these funds to be transferred to any place or places where the Secretary of the Treasury might direct. And thus the Bank would have the burden of transferring the public funds without having any advantage from the deposits. It would for example be obliged to transfer to New York the Branch notes received in Philadelphia or Baltimore, and to place the fund to the credit of the U. States in good and available money. And in like manner they might be compelled to transfer to Philadelphia or Baltimore or elsewhere at the pleasure of the Government the Branch notes received at New York. If therefore this obligation will continue on the Bank after the Deposits are withdrawn, that institution will be at the mercy of the Government and the Government will not be at the feet of the Bank.

## Library of Congress

Will the withdrawal of the deposits release the Bank from this duty? May they lawfully refuse to afford the facilities for transferring the public funds as soon as the deposits are taken from them?

The right to withdraw the deposits for any cause which the government may deem sufficient is given in plain and unlimited terms. They may be taken away in part or altogether, permanently or for a time, and there is no restriction upon this power in favour of the Bank. If the Secretary of the Treasury direct it to be done, and Congress do not by law order them to be restored, then by the provisions of the charter itself the Bank is to be no longer entitled to them during its existence, unless the government should think proper to restore them. Does the withdrawal of the Deposites repeal any clause in the charter or in any respect alter the provisions of that instrument? Certainly not. The change of the place of deposite is nothing more than the exercise of a power secured to the Government by the charter. The rights of the parties remain in every respect the same that they were before. For the exercise of one right cannot be the forfeiture of another right, unless it is made so by the charter. And the charter annexes no condition whatever in favour of the Bank upon the removal of the deposits. How then can it be supposed that while all the other rights of the Government and of the Corporation are admitted to continue notwithstanding the withdrawal of the deposits, this one clause securing to the Government the right to the transfer of its funds is to be considered as erased from the Law?

The Deposites are withdrawn in pursuance of the provisions of the act of incorporating the Bank, and not in opposition to them. The withdrawal does not by the terms of the act of incorporation, change in any respect the rights of the parties under the charter as originally granted. And it might as well be contended that it would deprive the Government of the right of appointing Directors and of requiring statements of the condition of the Bank as of the right now under consideration.

## Library of Congress

It may be said that the Bank took upon itself the obligation to transfer the public funds, in consideration of the advantages it would derive from the deposits, and that the loss of these advantages would therefore in justice release them from the burthen of making the transfer. To this argument there are two answers, either of which appear to me conclusive.

1st. The argument is not warranted by the language of the charter. It does not say that the duty to transfer shall depend on the continuance of the deposits and cease as soon as they are withdrawn. Nor are there any words in the act of incorporation which can be construed to mean that the obligation to transfer was undertaken in consideration that the public money should be deposited in the Bank. And it would violate one of the first and plainest principles in the construction of laws, and render all legislation vague and uncertain, if a condition should be engrafted on a statute by conjecture and surmise when the language of the law does not imply it.

2. If it were allowable to go out of the words of the law in order to ascertain the meaning of the parties and to employ ourselves in conjecturing what may have led the government to require this duty from the Bank and induced the Bank to undertake it, there is an obvious reason for the provision altogether independent of the public deposits.

The obligation to make the transfer is imposed upon the corporation by the 15th section of the act incorporating the Bank. By the section which immediately precedes it, (the 14th) the Government engages to receive the notes of the Bank in all payments to the United States unless otherwise directed by act of Congress. This obligation on the part of the government to receive the notes of the Bank was a most valuable one to that institution and made their notes current every where in the U. States and gave to that corporation many great and decided advantages over the state Banks. But in consideration of this agreement on the part of the Government it became indispensably necessary for the public security that the Bank should be bound to make their notes available funds wherever the government might require the money. The U. States must pay their debts in gold or silver if it is demanded. And the government could not without manifestly sacrificing

## Library of Congress

the public interest, have obliged itself to receive the notes of the Bank payable at the distant Branches, and at the same time take upon itself the burthen of rendering them equivalent to gold and silver in other places where the exigencies of the public might require the money to be used. It could not have been expected that the Government would bind itself to receive at New York for example the notes payable at the Branches of New Orleans or Louisville and also take upon itself the expence of converting these notes into gold and silver or into funds that would be equal to gold or silver in Boston and other places where the money might be required. The obligation of the Government to receive such funds created the necessity for the corresponding obligation on the part of the Bank to transfer them from place to place according to the wants of the government. And hence in the section next following the one in which the U. States agrees to receive the notes, the Bank agrees to make the transfer. And if we go out of the words of the law and construe it upon speculative notions as to the motives which led to the introduction of this provision into the charter we see a very natural and sufficient reason without recurring to the deposits. The propriety of this reasoning is also confirmed by the manner in which the 16th section relating to the deposits is framed. The same clause which gives the deposits reserves the right to withdraw them. And the power of deciding on that point is vested in the Executive Department in the first instance and does not as in the case of the notes require the previous sanction of an act of Congress. It is impossible to imagine that the charter intended that the obligation on the part of the Bank to transfer the funds should cease as soon as the Secretary of the Treasury withdrew the deposits or any part of them, while the U. States were to continue bound to receive the notes of the Bank no matter where payable. It is manifest that the government would be still obliged to receive the notes after the Deposits were withdrawn by the Secretary. Could it have been intended that the obligation to receive them should remain upon the public when the Bank was absolved from the duty of transferring the public funds. These two obligations are obviously correlative in their nature and intended to stand together. The deposits had nothing to do with them. They were to continue or not to continue at the pleasure of the

## Library of Congress

Government, and the power over them was therefore vested in the first instance in the Executive Department.

It may perhaps be said that the Bank cannot afford the facilities for transferring the public funds unless the deposits remain with them and that the performance of the duty must therefore be dependent on the continuance of the deposits.

It is true that the Bank cannot make the transfer required without possessing the particular fund intended to be transferred. And whenever the government possesses a fund in the notes of the Bank payable at its Branches and desires to have it transferred to any particular place these notes would as a matter of course be placed in the hands of the Bank. The government would neither expect nor desire to retain the notes due from the Bank and at the same time require the Bank to place a similar amount to the credit of the public in some other place. The notes due from the Bank and payable at its Branches would necessarily be placed in the possession of the Bank when the transfer was demanded. But there would be no necessity for depositing with them other funds which the government did not desire them to transfer, and which were already in such a place and shape that they could be used without loss and without the aid of the Bank.

If it should be supposed that the Bank would probably refuse to make any transfer unless the deposits are continued whatever may be the construction of the charter and that difficulties may arise on that account, the answer is a plain one. Such an act on the part of the Bank would be a palpable forfeiture of its charter and the government would have a right to protect the interest of the public by refusing to receive its notes, and the power reserved to Congress to forbid their receipt would unquestionably under such circumstances be promptly exercised. Besides it might as well be said that the Bank will refuse to make the transfers, unless the Government consents at once to renew its charter, or to adopt any other measure which the corporation may please to dictate. The Government cannot suffer its course to be directed by such considerations. It is sufficient for us to know that the deposits may be lawfully withdrawn, and that their withdrawal does

## Library of Congress

not by the charter discharge the Bank from the obligation of giving the necessary facilities for transferring the public funds from place to place.

Upon the whole I do not perceive any reason for apprehending the hostility of the Bank, sufficiently strong to deter the Government from withdrawing the deposits. And adhering to the opinion I have heretofore expressed on that measure,

I have the honor to be Sir with the highest respect yr. obt. St.